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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.880 OF 2005
IN
SUIT NO.3121 OF 2004

Gopal L. Raheja and another).. Plaintiffs

Versus

Vijay B.Raheja and others).. Defendants

Mr.Janak Dwarkadas, Senior Counsel, with Mr.P.K. Samdhani, Senior Counsel, Mr.P.K. Shroff, Mr.Subodh Joshi, Ms.Radhika Pinzara and Ms.Prachi Khandge i/b.M/s.Parimal K.Shroff & Co. for the Plaintiffs.

Mr.Navroz Seervai, Senior Counsel, with Ms.Niyati Mehta and Mr.Bhushan Shah i/b.J.Sagar Associaites for Defendant Nos.1 to 4.

Mr.I.M. Chagla, Senior Counsel, with Ms.L.Pareira and Mr.Shreekant Doijode i/b.Doijode & Associates for Defendant Nos.5 to 7.

Ms.Sarika D'Lima i/b.Raval Shah & Co. for Defendant No.8.

Mr.Mustafa Doctor i/b.Raval & Co. for Defendant No.9.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 16TH JUNE 2006

P.C.:

. The Plaintiffs have filed the present Suit for a declaration regarding their ownership rights in a property. According to the Plaintiffs, during the course of several meetings, they held discussions with Defendant Nos.1 and 2 for resolving certain disputes. The parties had agreed to certain terms and conditions in order to arrive at an understanding in respect of

certain properties. The Plaintiffs contend that these discussions were recorded by them without the knowledge of the Defendant. By the present Motion, the Plaintiffs are seeking leave to deposit the recordings of the discussions and the transcripts in this Court. The Plaintiffs have also sought an order from this Court permitting them to duplicate the original recordings. The Plaintiffs contend that it was necessary for them to record the discussions held between themselves and Defendants only in order to confront the Defendants if they denied their meetings with the Plaintiffs or the contents of the discussions.

2. The learned Counsel appearing for the Plaintiffs relies on the judgment in the case of *Chandrakant Ratilal Mehta and others* vs. *The State of Maharashtra*, **1993 Cri.L.J. 2863**. He submits that this Court has observed that it was a well settled position of law that tape-recorded evidence, if it is to be acceptable, must be sealed at the earliest point of time and not opened except under orders of this Court. The Plaintiffs therefore seek liberty to place on record the digital recordings of the discussions. The learned Counsel further submits that if the Plaintiffs are permitted to deposit the digital recordings in this Court, it would obviate any allegations from the Defendants that the recordings have been and/or are being tampered with by the Plaintiffs. He submits that it is necessary to bring on record these recordings since in an earlier

Motion filed by the Plaintiffs the Defendants had denied the conversations/discussions between themselves and the Plaintiffs. They had also denied the pleadings in the Plaint wherein the Plaintiffs have paraphrased the discussions held. It is only for confronting the Defendants with the recorded conversations that it is necessary to place on record the digital recordings. The learned Counsel also submits that no prejudice would be caused to the Defendants if such a procedure is adopted.

3. On behalf of Defendant Nos.1 to 4, the learned Counsel submits, by placing reliance on the judgments of the Supreme Court in the case of *Ziyauddin Burhanuddin Bukhari* vs. *Brijmohan Ramdass Mehra and others*, **AIR 1975 SC 1788** and *Ram Singh and others* vs. *Col. Ram Singh*, **AIR 1986 SC 3**, that the Plaintiffs are seeking to produce the digital recordings only to lend some authenticity to those recordings. He submits that the recording is not admissible in evidence as the principles on which such tape-recordings are admissible have been laid down by the Apex Court in the aforesaid judgments. The learned Counsel submits that the transcripts of these discussions have already been given to the Defendants and, therefore, no useful purpose would be served by the Plaintiffs depositing the recordings in this Court. The learned Counsel submits that the Plaintiffs had sufficient opportunity to tamper with the digital recordings from the time the recordings

were first made i.e. on 30th September 2003 till today or in any event till the transcript was furnished to the Defendants on 25th February 2005. The learned Counsel, therefore, vehemently opposes the application made by the Plaintiffs.

4. The learned Counsel for Defendant Nos.5 to 7 also opposes this application by submitting that there is no provision in law or procedure under which the Plaintiffs can seek the liberty prayed for from this Court. He points out Order 7 Rule 14 and submits that the Plaintiffs ought to have produced the documents i.e. the digital recordings when the Plaint was filed and not at a later stage. According to the learned Counsel, the list of documents annexed to the Plaint does not make any reference to the recordings. In such circumstances, submits the learned Counsel, the Plaintiffs cannot be permitted to deposit the document in Court.

5. This Court in the case of *C.R. Mehta* (supra) was considering criminal appeals filed by the accused in which they were convicted for offences punishable under Sections 120B read with Sections 161, 165A of the Indian Penal Code. It appears that the police on a complaint lodged by the then Minister had set up a tape recorder in the Minister’s room in order to record the conversation between the Minister and the accused. This trap was set up since the Minister complained that the accused had sought to bribe him for orders revoking the

detention orders. The learned Judge found that on each occasion after the recording was done, the tape was sealed and later, the same tape was used for recording on the next occasion on the balance part of the tape. It is in these circumstances that the learned Judge observed that the law was quite clear that tape-recorded evidence if it is to be accepted must be sealed at the earliest point of time and not opened, except under the orders of the Court.

6. In the present case, the recordings were made on 30th September 2003, 9th October 2003, 23rd December 2003, 20th January 2004 and 25th February 2004. There is nothing on record to show that the recordings of the discussions held on each day were sealed. The Plaintiffs have not placed reliance on the recordings in their Plaint but have adverted to these recordings only on account of the reply filed by the Defendants to an earlier Motion. The Plaint was declared on 25th October 2004. Therefore, the Plaintiffs had sufficient time to produce the digital recordings, if indeed they were inclined to produce the recordings in this Court by relying on the judgment of this Court in the case of *C.R.Mehta* (supra).

7. It is obvious that the Plaintiffs are relying on the recordings as evidence. Therefore, these recordings must be produced only when other evidence is produced by the Plaintiffs in support of their case. The

admissibility of the recordings would be considered only at that stage. Therefore, the submission based on the judgments of the Apex Court in the case of *Ram Singh* (supra) and *Ziyauddin Bukhari* (supra) need not be considered at the present moment.

8. In my view, therefore, there is no need to permit the Plaintiffs to deposit the recordings in Court. They have already furnished transcripts of the recordings to the Defendants. The transcripts not only contain the version in English but also the conversation conducted in Sindhi. In the event the transcripts and the recordings do not tally when such recordings are permitted to be produced along with the evidence, it would be open to the Defendants to bring it to the notice of the Court. The relevance of these recordings would also be a matter which would be decided at a later stage. Therefore, I need not go into the issue as to the admissibility and relevance of the recordings.

9. In my view, therefore, there is no need to permit the Plaintiffs to produce the recordings in Court at this stage since neither have they referred to the recordings in the Plaint nor have they mentioned these recordings in the list of documents which they rely on. Therefore, in my opinion, the Plaintiffs would always produce the documents, if necessary, at the stage when the affidavit of documents is filed.

10. Motion dismissed.